

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 2, ENTITLED, "REVOCABLE PERMIT," BY AMENDING SECTION 82-94 THEREOF, ENTITLED "CRITERIA FOR GRANTING/DENYING REVOCABLE PERMITS," BY AUTHORIZING AND SETTING FORTH ADDITIONAL CRITERIA TO BE CONSIDERED IN AN APPLICATION FOR A REVOCABLE PERMIT REGARDING AN EXISTING HEDGE ENCROACHING ON CITY PROPERTY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, certain hedges, some dating back many years (and inherited, or passed along, from property owner to property owner), have either been planted on City property, or have grown over time so as to encroach onto the City's right-of-way; and

WHEREAS, property owners often view ~~their~~ the hedges as an integral part of their property, as such hedges may provide privacy, security, and/or aesthetics for the property and its owner;

WHEREAS, in order to assist property owners with existing hedges on City property, the City is creating a revocable permit process with additional criteria so that property owners can legalize qualifying hedges which would otherwise violate the City Code; and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified above.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That those Sections of the City's Public Property Ordinance, as such Ordinance is codified in Sections 82-94 of the City Code, be amended as follows and hereinafter set forth below:

CHAPTER 82

PUBLIC PROPERTY

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ARTICLE III. USE OF PUBLIC PROPERTY

* * *

DIVISION 2. REVOCABLE PERMIT

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Sec. 82-94. - Criteria for granting/denying revocable permits.

- (a) Revocable permits shall be granted or denied based upon existence of the following criteria:
- (1) That the applicant's need is substantial.
 - (2) That the applicant holds title to the abutting property.
 - (3) That the proposed improvements comply with applicable codes, ordinances, regulations, neighborhood plans and laws.
 - (4) That the grant of such permit will have no adverse effect on governmental/utility easements and uses on the city property.
 - (5) That the grant of the revocable permit will enhance the neighborhood and/or community with such amenities as, for example, but without limiting the foregoing, enhanced landscaping, improved drainage, improved lighting, improved security, and/or public benefits proffered by the applicant.
 - (6) That granting the revocable permit requested will not confer on the applicant any special privilege that is denied by this article to other owner of land, structures or buildings subject to similar conditions located in the same zoning district.
 - (7) That granting the revocable permit will be in harmony with the general intent and purpose of this article, and that such revocable permit will not be injurious to surrounding properties, the neighborhood, or otherwise detrimental to the public welfare.

In order to grant a revocable permit, the city commission must make an affirmative finding with respect to each of the criteria set forth above. These findings may be made by one motion addressed to all findings or, at the request of any member of the commission, a finding or findings shall be considered separately. The revocable permit application shall be considered as a whole unless any member of the city commission shall request that the application be considered in parts, in which event the application shall be considered in such parts as requested. In light of the particular circumstances involved with each separate revocable permit request, the grant of any revocable permit shall not constitute or be deemed a precedent for the grant of any other revocable permit.

- (b) In addition, to the criteria, in section 82-94(a), above, revocable permits for seawalls under section 82-97, shall require compliance with the following additional criteria:
- (1) The seawall location may not, in any circumstance, be built at a location that would interfere with navigability. Should the proposed seawall interfere with navigability of the city's property (i.e., in this case, of the canal), then the applicant will be required, at its sole cost and expense, to dredge and replace the existing seawall.
 - (2) The city shall execute a perpetual easement in favor of the applicant, in a form reasonably acceptable to the city attorney, for as long as there is an encroachment

into the city's submerged land. The easement will allow the applicant to use the city's land by filling in the submerged lands, and obtaining access to the canal.

- (3) The applicant shall be solely responsible for maintaining the seawall.
 - (4) General liability coverage of not less than \$1,000,000.00, is required by the applicant. It shall include the City of Miami Beach as an additional insured, and shall contain a waiver of subrogation endorsement. All of the applicant/permittee's certificates shall contain endorsements providing that written notice shall be given to the city at least 30 days prior to termination, cancellation or reduction in coverage in the policy.
 - (5) The applicant shall indemnify and hold the city harmless for applicant's use of the city property covered by the revocable permit.
- (c) In addition to the criteria in section 82-94(a) above, revocable permits for existing hedges on city property shall require compliance with the following criteria:
- (1) The applicant must affirmatively establish that such hedge, as defined in section 46-56, has existed in its present location for a period of at least ten (10) years prior to the effective date of this subsection (c).
 - (2) The applicant must remit a completed application, including all application requirements set forth in section 82-92, to the city's public works department within six (6) months of the effective date of this subsection (c).
 - (3) The hedge must not, in any way, obstruct traffic or right-of-way visibility; corner visibility, as set forth in section 142-1135; nor the visibility required for the safe ingress and egress of any neighboring property, as may be determined in the city's sole discretion.
 - (4) The applicant shall be solely responsible for properly maintaining the hedge in a neat, evenly trimmed manner, which shall not exceed any dimension approved in the revocable permit.
 - (5) The applicant shall not be authorized to replace the hedge if the city's public works department determines, in its sole discretion, that the hedge has sustained substantial damage, or if a hedge harbors a communicable disease or pest that may spread to adjacent properties.
 - (6) The applicant may not assign or transfer the revocable permit.
 - (7) The applicant shall expressly authorize the city and/or its authorized representatives a right of entry onto the applicant's property to inspect, maintain or repair any utilities on city property, to inspect the property to assure that it is being used and maintained in accordance with the revocable permit, and/or to remove any hedge (or portion thereof) for any reason pursuant to this division. The applicant also expressly agrees that the city and its authorized representatives shall not be responsible for any damage to the hedge or the applicant's property or landscaping, made by the city and/or its authorized representatives, in order to inspect, maintain, repair or gain access to utilities located on the city property which is the subject of this revocable

permit. Additionally, any expenses incurred by the city, but not paid by the applicant, in removing the hedge or other landscaping on city property, shall become a lien upon the applicant's abutting property, which may be foreclosed upon within one (1) year of its filing.

- (8) The applicant shall obtain general liability coverage of not less than \$1,000,000.00. It shall include the City of Miami Beach as an additional insured, and shall contain a waiver of subrogation endorsement. All of the applicant's certificates shall contain endorsements providing that written notice shall be given to the city at least 30 days prior to termination, cancellation or reduction in coverage in the policy.
- (9) The applicant shall agree to indemnify, defend and hold the city harmless from any and all claims, liability, losses, damages and causes of actions which may arise out of this revocable permit.

For purposes of this subsection (c), the director of the public works department shall be authorized to approve or deny applications for revocable permits, in accordance with the criteria set forth herein. Any applicant who has been denied a revocable permit pursuant to this subsection (c) may appeal such denial, within 15 days of the serving or mailing of such determination, by filing a notice of appeal with the public works director. The public works director shall schedule such appeal to be heard by the mayor and city commission within 90 days, and shall give written notice of the hearing to appellant at their last known address. At the conclusion of such appeal, the decision of the public works director shall be upheld and the appeal denied, unless the mayor and city commission determine, by a five-sevenths (5/7th) vote, that the decision of the public works director shall be overturned and the appeal granted based upon the criteria specified herein. The determination of the mayor and city commission shall be a final decision as to the use of the city's right-of-way pursuant to this subsection, as it is a proprietary decision, at the city's sole discretion, to determine and control the manner and extent, if any, to which public property may be used by private parties.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2022.

PASSED AND ADOPTED this ____ day of _____, 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Kristen Rosen Gonzalez)

Underline denotes additions

~~Strikethrough~~ denotes deletions

Double underline denotes additions between first and second reading

~~Double Strikethrough~~ denotes deletions between first and second reading

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

11-7-22
Date

MAF